

Representative James A. Dunnigan proposes the following substitute bill:

AMENDMENT TO UTAH OPTOMETRY PRACTICE ACT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends the Utah Optometry Practice Act to permit certain people in limited circumstances to sell ophthalmic lenses without being licensed under the chapter.

Highlighted Provisions:

This bill:

- ▶ allows a person in certain circumstances to sell, fit, adjust, and dispense ophthalmic lenses without being licensed under the chapter;
- ▶ requires a prescription for an ophthalmic lens;
- ▶ authorizes an optometrist to designate the expiration date for an ophthalmic lens prescription;
- ▶ defines an unexpired prescription; and
- ▶ specifies the activities that the unlicensed person may engage in regarding the sale or dispensing of ophthalmic lenses.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **58-16a-102**, as last amended by Laws of Utah 2004, Chapters 48 and 280

28 **58-16a-305**, as last amended by Laws of Utah 2000, Chapter 160

29 **58-16a-501**, as last amended by Laws of Utah 2005, Chapter 71

30 **58-16a-801**, as last amended by Laws of Utah 2004, Chapter 48

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **58-16a-102** is amended to read:

34 **58-16a-102. Definitions.**

35 In addition to the definitions in Section 58-1-102, as used in this chapter:

36 (1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

37 (2) "Contact lens" means any lens that:

38 (a) has a spherical, cylindrical, or prismatic power or curvature;

39 (b) is made pursuant to a current prescription; or

40 (c) is intended to be worn on the surface of the eye.

41 (3) (a) "Contact lens prescription" means a written or verbal order for contact lenses

42 that includes:

43 (i) the commencement date of the prescription;

44 (ii) the base curve, power, diameter, material or brand name, and expiration date;

45 (iii) for a written order, the signature of the prescribing optometrist or physician; and

46 (iv) for a verbal order, a record maintained by the recipient of:

47 (A) the name of the prescribing optometrist or physician; and

48 (B) the date when the prescription was issued or ordered.

49 (b) A prescription may include:

50 (i) a limit on the quantity of lenses that may be ordered under the prescription if

51 required for medical reasons documented in the patient's files; and

52 (ii) the expiration date of the prescription, which shall be two years from the

53 commencement date, unless documented medical reasons require otherwise.

54 (c) When a provider prescribes a private label contact lens for a patient the prescription

55 shall include:

56 (i) the name of the manufacturer;

- 57 (ii) the trade name of the private label brand; and
58 (iii) if applicable, the trade name of the equivalent national brand.
- 59 (4) "Contact lens prescription verification" means a written request from a person who
60 sells or provides contact lenses that:
- 61 (a) is sent to the prescribing optometrist or physician; and
62 (b) seeks the confirmation of the accuracy of a patient's prescription.
- 63 (5) "Eye and its adnexa" means the human eye and all structures situated within the
64 orbit, including the conjunctiva, lids, lashes, and lacrimal system.
- 65 (6) "Fitting of a contact lens" means:
- 66 (a) the using of a keratometer to measure the human eye;
67 (b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
68 (c) trial fitting of contact lenses, which includes a period of time for evaluation for fit
69 and performance, to determine a tentative contact lens prescription for a patient if the patient:
- 70 (i) has not worn contact lenses before; or
71 (ii) has changed to a different type or base curve.
- 72 (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized
73 by means of laser or ionizing radiation.
- 74 (8) "Ophthalmic lens" means any lens used to treat the eye and that:
- 75 (a) has a spherical, cylindrical, or prismatic power;
76 (b) is made pursuant to ~~[an unexpired]~~ a prescription which does not expire unless the
77 prescribing optometrist or physician includes an expiration date on the prescription based on
78 medical reasons that are documented in the patient's file; and
- 79 (c) is intended to be used in eyeglasses or spectacles.
- 80 (9) "Optometric assistant" means an unlicensed individual:
- 81 (a) working under the direct and immediate supervision of a licensed optometrist; and
82 (b) engaged in specific tasks assigned by the licensed optometrist in accordance with
83 the standards and ethics of the profession.
- 84 (10) "Optometrist" or "optometric physician" means an individual licensed under this
85 chapter.
- 86 (11) "Optometry" and "practice of optometry" mean any one or any combination of the
87 following practices:

88 (a) examination of the human eye and its adnexa to detect and diagnose defects or
89 abnormal conditions;

90 (b) determination or modification of the accommodative or refractive state of the
91 human eye or its range or power of vision by administration and prescription of pharmaceutical
92 agents or the use of diagnostic instruments;

93 (c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact
94 lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to
95 diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its
96 adnexa;

97 (d) display of any advertisement, circular, sign, or device offering to:

98 (i) examine the eyes;

99 (ii) fit glasses or contact lenses; or

100 (iii) adjust frames;

101 (e) removal of a foreign body from the eye or its adnexa, that is not deeper than the
102 anterior 1/2 of the cornea;

103 (f) consultation regarding the eye and its adnexa with other appropriate health care
104 providers, including referral to other appropriate health care providers; and

105 (g) a person, not licensed as an optometrist, directing a licensee under this chapter to
106 withhold or alter the eye care services the licensee has ordered.

107 (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination
108 of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation
109 of abnormal conditions or symptoms of the eye and its adnexa.

110 (13) "Physician" has the same meaning as defined in Subsection 58-67-102(7).

111 (14) "Prescription drug" has the same definition as in Section 58-17b-102.

112 (15) "Unexpired" means a prescription that was issued:

113 (a) not more than two years prior to presentation of the prescription for an ophthalmic
114 lens; or

115 (b) in accordance with Subsection (3) for a contact lens.

116 Section 2. Section **58-16a-305** is amended to read:

117 **58-16a-305. License -- Exemptions.**

118 In addition to the exemptions from licensure in Section 58-1-307, the following persons

119 may engage in acts included in the definition of the practice of optometry subject to the stated
120 circumstances and limitations without being licensed under this chapter:

121 (1) a person who sells contact lenses on prescription provided by a person authorized
122 under state law to practice either optometry or medicine and surgery if the person complies
123 with Section 58-16a-801;

124 (2) a person who sells eyeglasses or spectacles as articles of merchandise or who
125 fabricates them from a prescription if the person complies with Subsection 58-16a-801(2), and
126 if the person:

127 (a) does so in the ordinary course of trade from a permanently located and established
128 place of business;

129 (b) does not traffic or attempt to traffic upon assumed skill in testing the eye and
130 adapting lenses according to the test;

131 (c) does not duplicate, replace, or accept for replacement any ophthalmic lens, except
132 in the case of an emergency;

133 (d) does not use in the testing of the eyes any lenses or instruments other than the
134 lenses actually sold; and

135 (e) does not give or offer eyeglasses or spectacles as premiums as defined in Section
136 13-26-2; and

137 (3) a person who fits contact lenses under the following conditions:

138 (a) he has a current certification from both the American Board of Opticianry and the
139 National Contact Lens Examiners;

140 (b) he does not give or offer contact lenses as premiums;

141 (c) he does not perform a refraction, over-refraction, or attempt to traffic upon assumed
142 skill in testing the eye;

143 (d) he operates in the ordinary course of trade from a permanently located and
144 established place of business;

145 (e) he performs the work involved in fitting contact lenses himself and does not
146 delegate the contact lens fitting to any other individual who is not qualified under this
147 Subsection (3);

148 (f) he does not use in the testing of the eye any lenses or instruments other than the
149 lenses he actually will sell;

- 150 (g) he provides services only to a patient who:
- 151 (i) presents an unexpired contact lens prescription; or
- 152 (ii) has had an eye examination within the prior six months by an optometrist or
- 153 ophthalmologist meeting the requirements under Section 58-16a-306;
- 154 (h) he maintains a copy of the patient's contact lens prescription for not less than seven
- 155 years;
- 156 (i) he enters into a written agreement with an optometrist or an ophthalmologist before
- 157 July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;
- 158 (j) he fits contact lenses for at least two years under the direct supervision of the
- 159 optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as
- 160 documented in the written agreement; and
- 161 (k) the optometrist or ophthalmologist described in Subsection (3)(i):
- 162 (i) ensures that the final contact lens is accurate;
- 163 (ii) presents a written copy of the prescription to the person fitting the contact lens; and
- 164 (iii) ensures that a copy of the prescription is provided to the patient, except as
- 165 provided in Section 58-16a-306.

166 Section 3. Section **58-16a-501** is amended to read:

167 **58-16a-501. Unlawful conduct.**

168 "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

- 169 (1) buying, selling, or fraudulently obtaining, any optometry diploma, license,
- 170 certificate, or registration;
- 171 (2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry
- 172 diploma, license, certificate, or registration;
- 173 (3) selling or providing contact lenses or ophthalmic lenses in a manner inconsistent
- 174 with Section 58-16a-801 or intentionally altering a prescription unless the person selling or
- 175 providing the lenses is a licensed optometrist or ophthalmologist; or
- 176 (4) representing oneself as or using the title of "optometrist," "optometric physician,"
- 177 "doctor of optometry," or "O.D.," unless currently licensed under this chapter.

178 Section 4. Section **58-16a-801** is amended to read:

179 **Part 8. Contact Lenses and Ophthalmic Lenses**

180 **58-16a-801. Contact lens and ophthalmic lens seller or provider.**

- 181 (1) A person may sell or provide contact lenses if the person:
182 (a) does so in the ordinary course of trade from a permanently located and established
183 place of business;
184 (b) does not perform refractions, over-refractions, or attempts to traffic upon assumed
185 skill in testing the eye;
186 (c) provides all contact lenses consistent with and in accordance with a valid contact
187 lens prescription;
188 (d) does not fit contact lenses;
189 (e) provides a contact lens to a patient after:
190 (i) receiving an unexpired verbal or written prescription; or
191 (ii) sending a contact lens prescription verification to the prescribing optometrist or
192 physician, regardless of whether the prescribing optometrist or physician responds to or
193 confirms the verification, provided that:
194 (A) the person has all of the information necessary to fill the prescription;
195 (B) the prescribing optometrist or physician has not informed the person that the
196 prescription has expired or is otherwise inaccurate prior to the person shipping or
197 hand-delivering the contact lens to the patient;
198 (C) the person confirms a valid, unexpired contact lens prescription for the patient if
199 the person is aware that the patient provided inaccurate prescription information in his last
200 order; and
201 (D) the person informs the patient that the prescription has expired or that there is a
202 medical problem associated with the prescription if the information is communicated by the
203 prescribing optometrist or physician to the person within 72 hours of the contact lens
204 prescription verification being sent; and
205 (f) maintains patient information, including the method and date of any prescription
206 verification, for no less than seven years.

207 (2) (a) A person may engage in the activities described in Subsection (2)(b), without a
208 license under this title, if the person:

- 209 (i) provides the ophthalmic lenses consistent with and in accordance with a
210 prescription from a licensed physician or optometrist that is unexpired as provided in
211 Subsection 58-16a-102(8)(b);

- 212 (ii) dispenses the ophthalmic lenses within or from the state;
213 (iii) does so in the ordinary course of trade from a permanently located and established
214 place of business;
215 (iv) does not perform refractions, over-refractions, or attempt to traffic upon assumed
216 skill in licensed physician or optometrist testing of the eye; and
217 (v) complies with impact tolerance standards based on ANSI Z80.1-2010, American
218 National Standard for Ophthalmics - Prescription lenses.
219 (b) In accordance with Subsection (2)(a), a person may:
220 (i) sell, reproduce, or dispense ophthalmic lenses;
221 (ii) fit or adjust ophthalmic lenses or frames;
222 (iii) assist with the selection of frames for ophthalmic lenses;
223 (iv) measure pupillary distance and interpret pupillary distance measurements; or
224 (v) measure or interpret the reading segment height in bifocal, tri-focal, progressive, or
225 multi-focal lenses.
226 [~~(2)~~] (3) Nothing in this section may be construed as requiring a person to be licensed
227 or certified in any way under this or any another chapter of this title to sell contact lenses in
228 accordance with Subsection (1), or to sell ophthalmic lenses in accordance with Subsection (2).